

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

MICHAEL KENNEDY,

Petitioner-Appellant.

v.

No. 99-6389

JOHN M. VANYUR,

Respondent-Appellee.

Appeal from the United States District Court  
for the Eastern District of North Carolina, at Raleigh.  
Malcolm J. Howard, District Judge.  
(CA-98-780)

Submitted: July 20, 1999

Decided: August 2, 1999

Before WILLIAMS, TRAXLER, and KING, Circuit Judges.

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Vacated and remanded by unpublished per curiam opinion.

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**COUNSEL**

Michael Kennedy, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit. See  
Local Rule 36(c).

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## OPINION

### PER CURIAM:

Federal inmate Michael Kennedy appeals the district court's orders: (1) dismissing his 28 U.S.C.A. § 2241 (West Supp. 1999) action for failure to exhaust administrative remedies; and (2) denying his motion for reconsideration. Kennedy claimed in his § 2241 motion that the application to him of certain "public safety and sentence offense characteristic factors" that did not exist at the time he was convicted and sentenced had the effect of extending his period of incarceration and therefore violated the Ex Post Facto Clause. We vacate and remand.

Kennedy stated in his § 2241 motion that he had exhausted his administrative remedies, a prerequisite to filing a § 2241 motion in the district court. See Brown v. Smith, 828 F.2d 1493, 1495 (10th Cir. 1987). After the district court dismissed the action, Kennedy filed a Fed. R. Civ. P. 60(b) motion, again claiming that he had exhausted his remedies. He included with the motion a March 5, 1997, letter referencing Kennedy's administrative claim and denying it at the national level. The letter apparently relates to the complaint that is the subject of Kennedy's § 2241 motion.

Because the district court failed to address the March 5, 1997, letter in its opinion, we vacate the judgment of the district court and remand to determine whether Kennedy has in fact exhausted his administrative remedies. We deny the motion for appointment of counsel and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

### VACATED AND REMANDED